

COMMISSIONERS APPROVAL

CHILCOTT 

LUND

THOMPSON 

TAYLOR (Clerk & Recorder)

Date.....November 20, 2006

Members Present.....Commissioner Greg Chilcott,
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Sally Fortino and Glenda Wiles

The Board of County Commissioners met to continue the November 16th meeting for division of the County into five commissioner districts, pursuant to the recent election. Present for the meeting were the following County employees and members of the Local Government Study Commission (LGSC): Glenda Wiles, Administrative Assistant and Ex-Officio to LGSC; Nedra Taylor, Clerk and Recorder; Regina Wilson, Clerk and Recorder Elect; County Attorney George Corn; Deputy County Attorney Karen Mahar; Theresa Blazicevich, Director of Environmental Health; GIS Director Ken Miller and GIS Technician Mike Snook; Alec Sutherland, Chairman of the LGSC; Howard Anderson, Member of the LGSC and Vicki Bohlig, Member of the LGSC

Also present were the following members of the public: Commissioner Elect Howard Lyons, Stuart Brandborg, Bob Brown, Rick Furhman, Tori Nobles, Jack and Marilyn Saunders, Robert Sutherland and Carolyn Weisbecker. Other citizens were present who chose not to sign in.

Commissioner Chilcott opened the meeting, noting it to be a continuation of the meeting originally called for on November 16, 2006. Commissioner district maps were then displayed to show the present and proposed boundaries. It was noted that boundaries must be as geographically compact and equitable as possible. The blocks were defined by the Census Bureau.

Regina said she called the Secretary of State to determine the deviation allowance, which is 5%. George said that is well within the margin in terms of the legislature. Nedra said the boundaries have been equalized to within 5 people, all under a 1% deviation.

A brief recess was called to allow spectators to inspect the maps.
After inspection of the maps the Commissioners invited public comment.

Alec said he understood they must move forward. He indicated the original numbers the GIS office utilized in order to design the original map were inaccurate. The County had declined to fix the inaccurate numbers, which prompted him to ask GIS to update the numbers, but they declined. He stated the Clerk & Recorder also asked that the districting follow the precinct lines which would assist them in future elections and the training of judges. When they attempted to follow the lines, it did not bring forth a good map of compactness which is one of the code requirements.

George indicated the information the GIS worked off of was in correct and the maps do not need to follow precinct lines. He stated at this point it is important for everyone to come to a compromise as to what the districts are. It is not productive to go into past history at this point.

Alec agreed. He stated the members of the Local Government Study Commission agree to move forward which will allow candidates to file today if they so chose.

Commissioner Chilcott referred to Section 7-3-183, sub section 2.

Howard Anderson indicated they must accept the current data and move forward, not utilizing the precinct lines. He felt the current, accurate data should be used for decision-making. Vicky Bohlig said she was in agreement; further adding if correct data had been available, to the study commission, this would have been done. She noted it is in the best interest of the citizens to move forward.

Regina said the most current data they had was from the Census of 2000. Ken agreed that was the most current data.

Alec said they tried to retain areas of population density within the districts, rather than split neighborhoods. Population around Hamilton is difficult to work with.

Glenda said the LGSC referred any questions they had to George so they were always in compliance with state law. George said the current proposal (population) was so small it should pass legal muster.

Rick Fuhman said he agreed with the 2000 Census data, and there seems to be no reason not to move forward. Why is there any qualification at all? These are the districts set up as they should be.

Howard Lyons said towns are split, commissioners are voted at-large; there is no representation specific to a district.

Alec said at-large voting is correct, but it is important to have candidates from the entire county to run so that Hamilton does not be over-represented on the board. He stated districts are needed for the purpose of nominating candidates even though there is at-large voting.

Commissioner Lund stated the GIS districting (of the maps) keep towns together. She appreciated the good job they did.

Commissioner Thompson said the new maps seem to meet the law. He added his appreciation for the hard work and accomplishments of the GIS and Elections Departments. He noted it is difficult to arrive at compact sizes, without having Hamilton over-represented.

George suggested allowing the LGSC to caucus briefly. When they returned, Alec stated a concern over the apportionment of Hamilton and asked if the Board of County Commissioners was willing to look at changing boundaries to keep areas of Hamilton within a single district.

Commissioner Chilcott answered that the Commissioners want the decision to be non-partisan and non-jurisdictional when referring to Ravalli County. Commissioner Thompson agreed. Howard Anderson said the LGSC voted unanimously to accept the map as presented.

Commissioner Chilcott said he was confused by MCA's language for election of new officers. (Title 7-3-160) He felt it was an amendment to the existing plan or form.

George said this was referred to in the Attorney General's opinion. Commissioner Chilcott referred to that opinion, saying it overwhelmingly seems to say there is no right or wrong answer. George said they are bound to follow it as the force of law. The Legislature has not chosen to change a single statute since the law was written. Unless another authority is there, that would control what the law is.

Commissioner Chilcott wondered why some County hasn't taken this to the District Court. George said it hasn't come up before. Those who wrote the Montana laws and statutes didn't address it.

Commissioner Chilcott quoted Mike Greeley, who said 'I do not issue opinions on hypothetical questions'. He added the law seems to contradict itself. The Legislature needs to look at it and clean it up. Fix it before someone else is faced with it.

George said the Attorney General's opinion should hold sway. Statutes are not harmonious. There was shabby drafting and enactment. Commissioner Chilcott agreed the questions needed to be answered so the legacy is not passed to other commissions.

George said the Attorney General's opinion states the law is unclear.

Commissioner Thompson stated the statutes do not provide crystal clear answers to questions. Many are dissatisfied with what is going on (i.e., the three Commissioners

having to run again in an election). The information from Mr. Blattie stated the law is ambiguous at least and in conflict at worst.

George said the legislature is the place to clear that up, not the courts.

Howard Anderson said he found the laws are 'really messed up and hard to read and understand, even from MACo and the Attorney General'. That is why LGSC sent everything to George. The Legislature is not interested in straightening laws.

Alec said Title 7 3 193 may provide guidance.

Commissioner Chilcott said they tried to save money for the County coordinating elections in conjunction with others. A General Election will cost \$80,000.

Commissioner Thompson said the redistricting of the County was the topic of discussion for the meeting. The Law states districts should be as equal as possible. He made a motion that they accept the lines as drawn and districts as presented at the meeting.

Commissioner Lund said it would require a legal description for each district; she seconded the motion and all voted "aye" the five districts as presented.

Commissioner Thompson asked that the information be forwarded to the Senior District Judge. George said it should go to both District Judges.

Howard Lyons asked if the letter from the Attorney General could be addressed.

Commissioner Chilcott said it was not on the day's agenda. He asked that Wednesday at 10 AM be set for discussion of the Attorney General's opinion, specific to the election of Commissioners. He thanked the County Attorney's office for their help.

In other business the Board of County Commissioners met for discussion and decision on the Pro Rata share for Sunset Orchards #3, Block 8, Lot 44 B AP. Rene Van Hoven said Condition 11 has caused Joe Smith difficulty. He would like to give the County a lot instead of the money. Karen said they would need a firm idea of the value of the lot, and a good legal agreement in place. They have an analysis summary, and would like to include an agreement that the County could consider. The figures aren't firm enough to assure the County would get enough money to cover the pro rata share. If more than the amount to cover the pro rata share was received, it may necessitate turning the excess to the developer. KENEE

Commissioner Chilcott said a general real estate appraiser is expensive, but that would be required for the County to sell the land. He read the law indicating the necessity for an appraisal. He added if the County took the lot in lieu of the pro rata share it would be considered a purchase. More information would be needed to be comfortable making such a decision. Commissioner Chilcott said though it is not a legal conflict of interest he has land in the area being discussed. He suggested there was insufficient data available to the Commissioners to arrive at a decision.

Terry Nelson said he was not well informed on the situation. He asked if they could put a lien on the lot until there was an offer on the land, get the subdivision filed and pay through that way. He stated that would put the onus on Mr. Smith to be sure someone will buy it. That would settle the question of value.

Karen said it is different securing a cash payment here as was in the Mountain Meadows Subdivision. She stated the Planning Department has been trying to find different ways to deal with this. There may be an answer, but they haven't found it yet. She suggested the Commissioners be conservative and determine that all conditions have been met. Commissioner Chilcott said the County can't take a deed to property without incurring significant expense and the wrath of the citizens. There is an option to secure the lot with the first saleable lot or two, whatever is necessary to cover pro rata. They can't take cost or expense or financial condition into consideration.

Commissioner Thompson said a developer's financial condition should not be a reason for asking for a deviation from the typical pro rata share. The onus is on the property developer, not on the County. This would open the door to multiple other subdivisions. Commissioner Lund commented on the staff report, which says the staff requested a written proposal, but has not received anything to date.

Terry said this is a unique piece of property. A variance was needed because of State lands; this is not a standard pro rata. The property is already under a variance. The developer just wants to get it done, whether by allowing a lien on the property or whatever. If the County allows a lien with the understanding that a buy/sell is in place, 'that is as sure as you can get to having money as soon as it closes'. It seems it would be a fairly quick process of filing the map and the County getting its money. The time frames might be a month or two.

Commissioner Lund said the bank might loan money on the strength of a buy/sell agreement. Commissioner Chilcott said the tax payers are not a bank.

Terry said the County would be eliminating a possible law suit over time issues; others have been completed in that same time frame.

Commissioner Chilcott said the Board of County Commissioners has done what can be done; it will stand up to judicial scrutiny. They have no proposal from him, only a letter from the broker, with no specific value.

Terry asked if there is anything apart from pro rata he may pursue. Commissioner Lund said he should discuss possibilities with his attorney.

Commissioner Chilcott said they could not approve something that hasn't met the conditions of approval.

Karen said the Planning Department suggests the burden is on the applicant to come up with a proposal, which should be done with the help of legal counsel. It is safest for the

County to strictly follow the regulations. They need to assure the County residents they are not taking on a risk to the tax payers.

Terry said if the developer did not get all \$108,000 for the lot he would need to come up with the remainder.

Commissioner Chilcott suggested the developer present a proposal. Rene said the proposal must be for something extremely binding. Commissioner Lund said they could take a letter of credit to guarantee improvements. Commissioner Chilcott said the pro rata analysis is to improve roads in a district so an improvement is guaranteed.

Commissioner Thompson said the County is not interested in taking land to sell, but would review a proposal. Commissioner Chilcott reiterated the need for a proposal from Mr. Smith.

In other business, the Board of County Commissioners met with an extension request for Sunnyside Orchards, Block 5, Lot 16 AP. The developer was delayed by a neighbor's lawsuit. (Ronald Lords) Rene recommended approval. Commissioner Thompson made a motion to approve the request for extension. Commissioner Lund seconded the motion and all voted 'aye'.

In other business, the Board of County Commissioners met to approve CAD for 9-1-1. Joanna Hamilton presented the agreement from Logysis, pursuant to Section 11.

Commissioner Chilcott asked if GIS has reviewed the agreement. Joanna stated they had and she recommended approval. They hope to find grant money in order to hire someone to manage this. Commissioner Thompson asked if it is something Dispatch needs. Joanna said it enhances 9-1-1 software.

Commissioner Chilcott inquired about the grant, which Commissioner Lund explained was from State funds. Joanna agreed. Commissioner Lund made a motion to approve the CAD Agreement. Commissioner Thompson seconded the motion and all voted 'aye'.

In other business, Skip said the Treasurers' and Dispatchers' contracts were rejected. He asked if Joanna wanted to move forward on the numbers agreed upon. Joanna agreed.

The Board met to reconvene the public hearing on the petition to abandon Rouse and Robbins Road as requested by Petitions Andy and Sarah Roubik. Due to the lack of written or verbal comments by the Fish & Game, Commissioner Lund made a motion to continue this hearing until November 30, 2006. Commissioner Thompson seconded the motion and all voted "aye".

The Board met to continue their public hearing with the Planning Board in regard to the revisions to Subdivision Regulations. Minutes of that meeting are as follows:

**Joint Public Hearing of the Ravalli County Board of County Commissioners and
the Ravalli County Planning Board
Meeting Minutes for November 20, 2006**

10:00 a.m.

**Ravalli County Administrative Services Center
215 S. 4th Street, Hamilton, MT 59840**

Continuation of Public Hearing

Amendments to the Ravalli County Subdivision Regulations

*This is a summary of the meeting, not a verbatim transcript. A CD of the meeting
may be purchased from the Planning Department for \$5.00.*

1. Call to order and Pledge of Allegiance

Commissioner Chilcott called the meeting to order at 10:04 a.m. and led the audience in the Pledge of Allegiance.

2. Roll Call for Planning Board (See Attachment A, Roll Call Sheet)

(A) Members

Mary Lee Bailey (present)
Dale Brown (present)
Phil Connelly (absent – excused)
Ben Hillicoss (present)
Dan Huls (present)
Maura Murray (present)
Tori Nobles (absent – excused)
Chip Pigman (present)
Tom Ruffatto (absent – excused)
Les Rutledge (present)
Lori Schallenberger (absent – excused)

Park Board Representative: Bob Cron (absent – excused)

(B) Staff

Jennifer De Groot
Karen Hughes
Renee Van Hoven

3. Amendments to the Agenda

There were none.

4. Correspondence

Karen discussed correspondence received within the Staff Report.

5. Public Hearing Continuation: Amendments to the Ravalli County Subdivision Regulations

(i) Staff Report

Karen noted that at the November 9, 2006, hearing, Staff agreed to take public comments and insert them into the subdivision regulations draft. She said she recommended a number of changes, but in some cases just responded to the comments. She noticed on Friday, when talking to another county, that she left out a major section of revisions to Chapter 8, which refer to procedures in Chapter 3. She explained that the County needs to update Chapter 8 immediately, but cannot do so at this meeting because it was not advertised. She noted that Staff received additional comments between the November 9, 2006, hearing and today. She highlighted a packet with comments from certain Planning Board members and Marilyn Owns Medicine (See Attachment B, Comments Received Subsequent to the November 9, 2006 Public Hearing). She also explained that comments from Candi Jerke were submitted that morning (See Attachment C, Letter from Candi Jerke). She submitted the Revised Public Review Draft into the record as her Staff Report. (See Attachment D, Ravalli County Subdivision Regulation Revision, November 16, 2006 Draft)

(ii) Public Comment

Jason Rice recommended that the definition of "Easement" include that the easement is a County road as long as it was included in the County Commissioner logs, noting that some of the roads were not recorded with the Clerk and Recorder. He noted that requirements under Section 3-1-5 (a)(viii) were virtually identical to Section 3-1-5 (a)(xxv).

Commissioner Lund recommended removing the requirement for "abstract of title" and just requiring a title report.

Karen agreed to make that change.

Jason Rice noted that preliminary road plans and approval by the Road Department were proposed to be part of the subdivision application per Section 3-1-5 (a)(xxxix). He said that if, during the review, changes are recommended for the road, the applicant will have to go back through road review.

Commissioner Chilcott recommended that Staff respond to each public comment item and have the Boards discuss them as well. Both Boards agreed.

Karen asked if he wanted the road plan review to take place during the sufficiency process of the subdivision application.

Jason Rice said it would be nice to turn in road plans with the element review, but not have to have them reviewed prior to element review. He noted if Staff recommends changes after preliminary approval, it puts the applicant back where he or she started and voids the element review.

Karen said that her struggle was to find the safest route for the County. Staff is concerned about getting road plans through the process in accordance with the required deadlines. She noted that it would be major undertaking to have the Road Department and consulting engineers respond on the same timeline as is required for subdivision review. She said that it is safest to have road plans approved prior to the subdivision submittal and that Staff rarely requires or recommends changes.

Becky Weaver said that there would be no timeframe for consulting engineers to finish road reviews. She noted that the applicant would not submit the subdivision application until after the road plans are approved; if the road review takes months, they will be adding additional wait time.

Karen said that one option is for the County to hold the Road Department and consulting engineers to the same timeframe. She noted that Jason Rice recommended turning in road plans at element review and then having road reviews meet the sufficiency review timeline parallel to the Planning Department review of the subdivision.

Jason Rice said that would create some accountability. He said that approval of road plans should be required for sufficiency review and final design work should not have to be completed prior to the first submittal.

Karen noted that she discussed changes to the review process with consulting engineers, such as having road plan review as part of sufficiency review. They assured her that they would be able to meet the deadlines.

Jason Rice noted that most of the time road reviews are being completed prior to other outstanding sufficiency items.

Karen noted that in general, sufficiency letters often say road reviews are outstanding.

Rence suggested making road plans required prior to the determination of completeness.

Jason Rice said that the proposed regulations tie his hands on when road plans can be submitted to the Ravalli County Road and Bridge Department (RCRBD). He noted that sometimes the applicant wants to submit them earlier.

Karen noted that current procedures were suggested by the RCRBD and adopted by the County Commissioners. She noted that the applicant could submit a copy of the plans to the Planning Department as part of an element review. She asked the Boards if they wanted road plan reviews to follow sufficiency review.

The Boards agreed.

Karen suggested striking out “and approval packet from the Ravalli County Road and Bridge Department that includes the correspondence between the consulting engineer and the subdivider” under Section 3-1-5 (a)(xxxix) and adding that as an item under Section 3-1-5 (e).

Jason Rice noted that if the applicant has to provide the road information, the Planning Department can write a denial letter. He noted that Section 3-1-6 (a)(iv) was struck-out, but Section 3-1-6 (b)(i)(D) needs to be struck-out as well. He noted that if it takes 10 months for road reviews, it will not invalidate the whole submittal. He noted that the consultant might want to address comments from the Planning Board and bring his or her presentation to a conclusion after the end of public comment, but that is not allowed under Section 3-2-6.

Karen noted that the BCC would have to accept comments.

Commissioner Chilcott noted that in the past, rebuttal was part of the Commissioners’ agenda, but the Commissioners struck it.

Karen explained that the proposed agenda allows the rebuttal to be focused on decision-making items, and less on general information. She noted that the BCC has to take comments from the subdivider, but she could add in a rebuttal if the Boards wish that.

Jason Rice said that if there was a time after the end of public comment, it could keep people on task. He said he is just afraid of a

future environment where applicants or consultants would not be allowed to respond.

Dan asked if it would help to move receipt of Planning Board advice up to Section 3-2-6 (a)(iii).

Karen explained that if the Planning Board has a quorum at the meeting and wants to provide comments, they should be able to do so based on all comments contained in the record.

Jason Rice said that if the Planning Board submitted written comments, it would be nice to have them as part of the Staff Report before the hearing. He asked about the findings of fact under Section 3-2-8 (b)(v)(F). He noted that it appears from the comments that changes will need to be made soon in other chapters and thought the water quality section fell in this category. He asked if the review of the six criteria will be based on public comment.

Karen noted it will be weighed based on the Consideration – Evidence section, Section 3-2-8 (c).

Jason Rice suggested that amended application guidelines (as found in Section 3-2-9) would need to be reworked on a state level and noted that Missoula County's regulations are confusing as well. He requested more examples of material changes. He also recommended adding a timeline for an appeal under Section 3-2-9 (e)(i). He noted that if the delay is long enough, it would be more viable for the applicant to restart the process.

Karen noted he was referring to Comment 92 and the suggestion to limit the appeal to 30 days. She explained that legal advice received from the Montana Association of Counties and the County Attorney's Office was that they already had too many timelines and they should avoid any additional ones. She asked the will of the Boards.

Commissioner Lund expressed interest in Jason's idea.

Commissioner Chilcott noted that these decisions usually receive pretty quick results and recommended 30 working days.

Chip agreed, stating that there would be accountability on both sides.

Commissioner Lund agreed with Commissioner Chilcott's proposal.

Commissioner Thompson said that he does not want to add any additional timelines if it opens up the County to legal disputes. He said

that if Staff can meet the deadlines without a problem, that that is fine, but if they cannot, there is a problem.

Commissioner Lund reminded him that these decisions are made by the Board of County Commissioners.

Commissioner Thompson noted that in a short period of time, there will be a longer, more complicated process due to additional Commissioners.

Becky Weaver said that the definition of "Stream" could be tightly interpreted to apply to every subdivision. She noted that the floodplain analysis or waiver required under Section 3-1-5 (a)(xliii) would pertain to any subdivision within 1,000 feet of a stream. She noted that the definition of stream is important due to that requirement.

Karen asked if Becky was requesting to keep the language "draining an area of 15 square miles or more."

Becky Weaver said that is her intent, but she also wants to change the "Stream" definition. She noted that the arbitrary amount of 15 square miles is reasonable.

Karen said from Staff's perspective keeping the status quo is easier, but she knew the technical requirements for floodplain analyses were out-of-date. She noted that Becky's request is to keep 15 square miles as part of the floodplain analysis requirement. She recommended keeping the definition of "Stream" and noted that there are sections of streams that are connected underground.

Commissioner Chilcott asked if they could add a surface stream that drains an area of 15 square miles or more.

Terry Nelson noted that there are no intermittent streams or underground water sources draining 15 square miles or more.

Jason Rice noted that he completed waivers on streams draining 15 square miles and on most, floodwaters did not overflow the banks. He noted that they would be required to request many waivers if the proposed regulations are adopted.

Becky Weaver asked the qualifications of a hydrologist and noted that a hydrogeologist is not the same as a hydrologist. She said that floodplain analyses are required to be stamped by Professional Engineers, but are not being reviewed by them. She argued that Larry

Schock is qualified, but is not a Professional Engineer. She also noted that someone can receive a hydrology degree but not become a PE.

Commissioner Lund recommended removing "qualified hydrologist" under Section 3-1-5 (a)(xlili).

Becky Weaver expressed disagreement with Section 3-1-5 (a)(xlili)(D), particularly the requirement of obtaining upstream and downstream cross-sections. She explained that some surveyors from PCI were kicked off private property while trying to do downstream cross-sections. She noted that subsections (2), (5), and (7) under that section require off-site cross-sections. She explained that sections (1) and (3) under that section give professional engineers flexibility to do cross-sections they think are necessary. She noted that the regulations also allow Staff to require more information. She requested removal of Section 3-1-5 (a)(xlili)(D)(2), (5), and (7). She noted that it is difficult to access private property.

Commissioner Chilcott asked why she was concerned with Item (5).

Becky Weaver explained that cross-sections at every single lot line are not necessary. She said that the point is to define the floodplain for the subdivision.

Commissioner Chilcott said he understood it to make sure that sewer and other sensitive areas were outside of the floodplain area.

Becky Weaver said that does not require a cross-section of each lot line.

Terry Nelson said that sometimes he does floodplain analyses and then designs the lots around the floodplain. He noted it was difficult to create cross-sections on lot lines.

Karen noted that it makes sense to her, but she does not do detailed floodplain reviews. She noted that the Floodplain Administrator and Larry Schock cannot be reached at this time.

Commissioner Lund recommended highlighting the item for input from Larry and Laura.

Karen summarized that the County Commissioners want her to take out sections recommended by Becky Weaver subject to approval by Larry and Laura. She asked for input from the Planning Board.

Chip agreed and said that off-site requirements are not necessary.

Commissioner Chilcott said that if surveyors cannot get on private property because the landowner denies access, the County cannot require that information.

In response to a suggestion that the landowner write a letter saying they denied access, **Chip** noted that a disgruntled landowner would probably not take the time to write a letter.

Commissioner Chilcott said that in the public hearing process, that disgruntled landowner might say that the subdivision will impact their property and the County will not be able to prove they were contacted.

Chip noted, however, that the County cannot require access on private property if the landowner is opposed.

Karen suggested leaving the last half of Item (7).

Becky Weaver said that would be fine. She noted that if they are still pushing the floodplain on upstream properties, then professional judgment comes into play.

Karen recommended taking each sentence under Section 3-1-5 (a)(xlili)(D)(7) and making them separate items. She noted that the Boards can wait for technical comments or accept the regulations as is and if there are major problems, changes can come through with revisions to Chapter 8.

Commissioner Chilcott said he was leaning toward striking Section 3-1-5 (a)(xlili)(D)(2), (5), and the first sentence of (7). He said that if Larry Schock and Laura Hendrix have issues with that decision, then they can open it back up for discussion. The Planning Board concurred.

(iii) Discussion and Deliberation of the Planning Board

Karen suggested that the Boards consider written comments.

Chip asked if requiring additional letters from agencies will be the norm, per Section 3-1-4 (c)(ii) and (iii).

Karen noted that normally Staff provides a deadline for the comments, but sometimes they need follow-up comments. She noted that if Staff, the Planning Board, or the Board of County Commissioners wants to ask other agencies, they have to let the developer know.

Chip noted that historically, if they did not receive a response, they assumed the agency did not have any comments. He asked how much follow-up there should be.

Karen noted it will be a case-by-case basis. If it is critical, Staff will be proactive and attempt to contact the agency as necessary.

Chip asked why a public meeting is needed to approve each phase as required in Section 3-2-8(f)(iv).

Karen explained it is the normal practice to hold a County Commissioner meeting to sign the final plat. She offered to clarify the process.

Chip asked where the appraisal report under Section 3-4-4(a)(xii) will come from.

Karen answered that fair market value will come from a real estate appraiser. She noted that the change was made to the parks section of the regulations.

Renee suggested clarifying that section by adding a reference to the parks section.

Karen said she randomly surveyed a few appraisers and they thought an appraisal dated within a year was too old, but six months would be appropriate.

Commissioner Thompson agreed that six months seems reasonable.

Becky Weaver asked how applicants can submit a copy of the appraisal report and a receipt at the same time. She noted that the Planning Department recently told her to submit an appraisal so they could calculate the cash-in-lieu amount.

Karen noted that both are required prior to final plat approval.

Renee noted that applicants will need to submit the appraisal ahead of time.

Ben asked for a response to Candi Jerke's concerns that the meeting was not properly noticed.

Karen read from the notice. She said that the notice appears to encompass the phasing and that the legal ad was reviewed by the County Attorney's Office prior to publication. She also noted that she

forwarded comments from Marilyn Owns Medicine to the County Attorney's Office, but did not receive a response to them yet.

Chip recommended the adoption of the Ravalli County Subdivision Regulations from the November 16, 2006 Revised Public Review Draft including those changes made in today's meeting.

Maura seconded the motion.

(iv) Planning Board's Action

The vote was called; the members voted (6-0), with one abstention, to approve the motion. (See Attachment E, Planning Board Vote Sheet)

(v) Discussion and Deliberation of the Board of County Commissioners

Commissioner Lund stated that she was hung up on road issues. She noted that the definition of "Road, County" in Chapter 2 is scary for her because not many roads were legally adopted by the County. She asked for a discussion on if county-maintained roads qualify as county roads.

Dale agreed and noted that this County has many homeowners' associations maintaining roads because the County will not accept or maintain them.

Commissioner Chilcott noted there are many different types of roads including county roads, county-maintained county roads, public roads on public easements, and public roads on private easements. He noted that the County Attorney's Office recommended that the Board decline from determining if roads are legally adopted or not.

Commissioner Lund stated that it is not fair for each subdivider to go to court to prove county roads are county roads. She noted that the County has maintained Meridian Road, and it was not formally adopted. She stated that the County needs a definition of "County Road" on which everyone can agree. She recommended deleting the word "legally" from the "Road, County" definition.

Karen noted it is a recently-adopted definition. She said that she does not want county road defined differently in different sections of the regulations and recommended changing it in Chapter 5.

Commissioner Lund said that it has been a year and the County has not fixed mistakes in Chapter 5. She noted that several places in the proposed regulations use the word "legal," such as Section 3-1-4 (b)(iv).

Dan suggested adding language to say as it applies to these regulations, a county road would be county-traditionally-maintained and make that definition specific to these regulations.

Jason Rice passed out a list of County Roads from the Road Department. **Karen** said she put forward the idea of placing a list of County roads in the Subdivision Regulations, but was shot down by the County Attorney's Office. She noted she has a different list from the Road Department than the list Jason provided and her copy has handwritten notes on it.

Commissioner Lund suggested that the definition of County roads include "as per county-maintained list."

Karen noted that the pro rata section in Chapter 5 is linked to certain roads, but the list from the Road Department is constantly changing.

Jason Rice noted that the County would have to change the regulations every time they wanted to update the list.

Chip asked how the road list is changing if the County has not accepted new roads over the last 20 years.

Commissioner Lund suggested saying "see Schedule X to see a County-maintained road list at this date."

Commissioner Chilcott noted that there have been many changes in the Road Department and definitions of roads by usage. He said it is reasonable that there could be a list and the Commissioners can do a legal adoption of them at that time. At this time, he does not have a clear definition of a county road.

Commissioner Thompson agreed with Commissioner Lund about the word "legal." He noted that this Board may legally adopt county roads that some other Board did not adopted correctly. He said that he does not want to say "county-maintained roads," but recommended removing "legally."

Jason Rice suggested using "county-maintained and/or adopted."

Commissioner Chilcott noted that maintenance does not make a road a county road.

Jason Rice said that pro rata should apply to roads that the county maintains.

Commissioner Chilcott said that “county-maintained” scares him.

Commissioner Lund noted that there are 300 subdivisions on record that dedicated roads to the public forever.

Commissioner Chilcott stated that all elements of an adopted county road need to be there and that there are legal distinctions between a county road and a public road.

Karen noted that the County Attorney’s Office was supportive of making amendments to clarify pro rata in Chapter 5.

Both Boards took a five-minute recess.

George Corn (via Speakerphone) stated that he wants to see the public road issue straightened out, but unless Karen is prepared to address Chapter 5, definitions in the regulations need to be consistent. He noted that they could do road changes with changes to Chapter 8. He said he was cautious to make Commissioner Lund’s changes because it will distort things.

Commissioner Lund agreed but asked how to make the changes.

George recommended noticing them with the Chapter 8 hearing.

Karen noted that she will need to have proposed changes ready when the legal ad is printed. She noted that she could not make that draft in three days. She noted that she has no problems making those changes, but if they want Chapter 8 completed in two weeks, that means she has to prepare those changes today. She said that she can prepare a draft and advertise for Chapter 5, but it will take a week or two.

Commissioner Chilcott asked what would be on hold for the week or two until the changes are made. He noted that the County Attorney’s Office has been dealing with many different priorities and asked to hear those for the next two weeks before making this the Board’s next priority.

George noted that Commissioner Lund called to ask if they could change the definition of a legal county road. He noted that Karen said they could not make definition changes in Chapter 2 because it would affect Chapter 5. He said he does not recommend making changes until Karen is comfortable that she has those changes in Chapter 5 made and they are reflected throughout the regulations.

Commissioner Lund asked what would happen if these draft regulations were adopted with the current proposal of "Road, County."

Karen said that the Board could direct Staff to come back with an expedited timeline to make changes to fix the road issues (i.e., which roads need to be improved and which will be assessed pro rata) and put it on the Planning Department's list of priorities. She noted that the Board has to adopt something.

Commissioner Chilcott noted that if they change the definition, they could create conflicts with state law. He said that the County needs a list of county roads and a proper definition. He also stated that he does not want to create conflicts with Chapter 5.

Commissioner Lund asked if they could incorporate hearings for Chapters 5 and 8.

Karen said that she cannot promise changes to Chapter 5 can be completed by the time changes to Chapter 8 are advertised.

Commissioner Chilcott asked if Staff can have a hearing on Chapter 8 soon and then a hearing on Chapter 5.

Karen noted that everyone wants Chapter 5 fixed.

Commissioner Lund asked why a digital copy of the plat is required at preliminary plat stage.

Karen noted that Staff and Ken Miller from GIS want to have visual aids to put on the aerial photo. She noted that even if the information changes, GIS would still prefer the information at this time.

Terry Nelson asked if there were restrictions on how the information was submitted, such as email.

Karen said it does not matter how it is submitted, but notes that no one uses the floppy disks that are currently submitted.

Commissioner Lund noted that she also had problems with the exemption section.

Karen agreed that there were substantial comments on exemptions and that she tried to explain rebuttable presumptions. She suspected that this will require substantial revisions. She noted that she went with most of the Model Regulations because it was reviewed by a cross-section of

planners. She explained that the concept of “rebuttable presumption” is something that raises a flag to require additional discussion.

Commissioner Lund asked about Section 4-5-2 (e) which limits the resale of lots created through a family transfer.

Karen said that the length of time came from George Corn in a memo to the Clerk and Recorder’s Office. She noted that he suggested that lots not be sold for three to five years and noted that this is part of a larger discussion of exemptions being worked on at the state level at this time.

Commissioner Lund recommended changing the timeframe to three years.

Howard Lyons asked why both the gifted piece and the remainder are tied up for five years.

Karen noted that the policy was recommended by the County Attorney’s Office and that it was intended to tie up both parcels.

Howard Lyons said that the gifted piece might be restricted, but did not see a reason to tie up the remaining piece.

Commissioner Chilcott said that they need to come up with a number. He noted that sometimes life circumstances change, but sometimes people try to evade subdivision laws.

Karen noted that this provision was not in the Model Regulations, but was included to reflect policy and opinions coming out of other County offices. She noted that the length of time came from a range recommended by the County Attorney’s Office and it applies to both pieces, but gives discretion to the Clerk and Recorder’s Office as they review it.

Howard Lyons noted that family transfers are legal ways of dividing property under Montana law. He noted that people feel like crooks when they apply for family transfers because of all the evasive language.

Commissioner Thompson said that during his time on the Board, there have been multiple instances of people using the family transfer mechanism to subdivide land. He noted one lady who granted three parcels of land to her children who gifted them back to her shortly thereafter. She then put them on the market. He said that they took it to court and there was resolution, but she was trying to evade subdivision laws. He said that after a short period of time, the person with the gifted

piece should be able to do what they want with the land. He noted that evasions happen all over the state.

Commissioner Lund noted that they should not punish everyone for one bad experience. She stated that she did not like the rebuttable presumptions.

Dan said that a three-year restriction on the gifted lot would be adequate, but not on the remainder lot.

Ben recommended keeping the five years and tying up the remainder because otherwise it allows an automatic subdivision.

Chip said that it seems they are trying to regulate a very narrow percentage of overall activity. He said that if they can get it so most people adhere to the law, they can take care of the other small percentage that take an advantage of it.

Commissioner Chilcott said that he likes the family transfer exemption, but does not want to open doors for people to evade. He said even if it would require another governing body meeting, it is better than granting a free route to evaders. He said that the public has a legal right to be part of the process.

Jason Rice said that in Missoula County subdivision evaders are charged with a misdemeanor.

Jimmy Canton said that if a husband gives his wife a parcel of land, there is public review. He said that a minor subdivision is exempt from subdivision review and there are no public comments on subdivisions of five lots or less.

Commissioner Chilcott noted that every meeting they have is public and the Board takes public comment. He explained that there are different rules between a public hearing and a public meeting.

Chip asked why it was not in the Model Regulations if it is such a big issue. He said that the County has to deal with evaders about once a year.

Commissioner Chilcott said that it is reasonable and he wants people held accountable and treated equally.

Kristin Smith said she is concerned about this provision and asked if the Counties are enabled to enact a timeline. She said that there will be suggestions in the next legislative session to enable local governments

to make those decisions for resale, but does not know if it is currently part of an enabling statute.

Commissioner Thompson noted that the regulation leaves an "out."

Karen noted that the Clerk and Recorder's Office and the Planning Department were hopeful that this policy suggested by the County Attorney's Office would be in the regulations because otherwise, it is hard to enforce. She noted that currently, if someone tries to convey land within that time frame, the Clerk and Recorder's Office has been asking that person to provide a reason, which is filed with the deed. She noted that because the County Attorney's Office suggested it, she assumed that the County was enabled to create this regulation. She acknowledged that a working group has been working on revisions to this section. She referred the group to the County Attorney's Office.

Commissioner Lund recommended changing the time limit to three years.

Curtis Cook stated that under Section 4-5-2 (a) a man and his wife who own 100 acres and have nine children can gift a piece to each child through the family transfer exemption process. He noted that if the parents gift a piece to the first child, no other family transfers can be granted for five years. He recommended a restriction on retransfer by a family member who has evaded subdivision law but not restricting the rest of property. He saw no reason to tie up the remainder piece. He said that to comply with family transfer laws and still enable people to do additional family transfers, he does not think any time element should be in this section of the regulations.

Commissioner Chilcott said that by restricting it, they are taking away a right.

Dan recommended restricting the gifted lot and allowing the parent lot to be gifted again or sold.

Commissioner Chilcott noted that people will abuse it, but Mr. Cook's argument is valid.

Karen summarized that they will agree to restrict three years for transfer of gifted parcels, but not for the remainder.

Commissioner Lund asked if the Identification Codes in Section 4-8 were cleared with the Clerk and Recorder's Office.

Karen affirmed that they were.

Commissioner Chilcott went over agreed changes to the regulations. He said that the Board agreed to leave definitions of "Road, County" and "Stream" as proposed, but noted they will amend the floodplain analysis section.

Commissioner Lund asked why the stream definition should stay if no one knows where it came from.

Karen said that technical staff will need to weigh in on that and at this point Staff was more focused on implementing needed changes.

Commissioner Chilcott continued with the changes, including deletion of Section 3-1-5 (a)(viii), amending Section 3-1-5 (a)(xxxix) and adding a subsection (E) to that section. He noted they agreed to keep the area of 15 square miles or more under Section 3-1-5 (a)(xliii)(A), removing the comma after "engineer" and striking "qualified hydrologist." They also agreed to strike items from Section 3-1-5 (a)(xliii)(D)(2), (5), and the first sentence of (7), but creating item (8) out of the second sentence. In addition, the Board agreed to strike Section 3-1-6 (b)(D), but leave Section 3-2-6 as is.

Commissioner Lund said that with more Commissioners, it might be harder for consultants to receive a rebuttal.

Commissioner Chilcott noted that this will be the agenda for their meetings and the Board will have to ask for mitigation. He said that the only things the consultants should be concerned about rebutting are items proposed for mitigation.

Jason Rice noted that people might want to discuss the findings of fact under the rebuttal.

Commissioner Chilcott asked if people raise an issue and the Board does not take action on it, why they should spend time rebutting.

Jason Rice suggested having the regulations say "Subdivider's clarification of testimony and/or consultation."

Commissioner Chilcott said that he does not want to hear comments on things that are not action items.

Jason Rice recommended limiting comments to the six criteria. He noted that under the proposed regulations, developers can only talk about mitigation for impacts.

Commissioner Chilcott stated that he does not want to hear emotionally-driven debates that do not address the six criteria.

Commissioner Thompson agreed.

Karen noted that Chip mentioned clarifying that a public meeting is not required for each phase under Section 3-2-8 (f)(iv).

Commissioner Chilcott agreed to clarify that. He continued that a decision on an appeal described in Section 3-2-9 (e)(i) will be made within 30 working days. He noted that they agreed to have Section 3-4-4 (a)(xii) reference Section 6-1-7 of the Subdivision Regulations. He noted they agreed to change Section 4-5-2 (e) to "within three years of creation of the gifted tract."

Commissioner Lund asked if rebuttable presumptions came from the Model Regulations.

Karen affirmed that they did and recommended thinking of them as red flags that require further explanation.

Commissioner Lund motioned to accept the November 16, 2006 Revised Public Review Draft as amended in the meeting.

Commissioner Thompson seconded the motion.

(vi) Board of County Commissioners' Action

The Commissioners voted (3-0) to approve the motion. (See Attachment F, BCC Vote Sheet) Resolution No. 2006.

6. Close Public Hearing

7. Adjournment

Commissioner Chilcott adjourned the meeting at 12:49 p.m.

In other business the Board of County Commissioners met for discussion of representation and participation in Five Valleys Regional Transportation Plan. Commissioner Thompson made a motion to appoint Commissioner Chilcott to Five Valleys Regional Transportation Plan. Commissioner Lund seconded the motion and all voted 'aye'.

Commissioner Chilcott attended a MR TMA meeting in Missoula during the afternoon hours.